

EXHIBIT 2

Niemann, Robert A. - Vol. III

November 19, 2009

Baltimore, MD

Page 563

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3 - - - - -
4 IN RE: PHARMACEUTICAL) MDL NO. 1456
5 INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
6 PRICE LITIGATION) 01-CV-12257-PBS
7 THIS DOCUMENT RELATES TO)
8 U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
9 the Florida Keys, Inc.)
10 v.) Chief Magistrate
11 Abbott Laboratories, Inc.,) Judge Marianne B.
12 No. 06-CV-11337-PBS) Bowler
13 (caption continues))

14 - - - - -

15
16 Videotaped deposition of ROBERT A. NIEMANN
17 Volume 3

18
19
20 Baltimore, Maryland
21 Thursday, November 19, 2009
22 9:00 a.m.

1 Q. Let me strike it. Let's start over. I see
2 your concern.

3 A. It was a concern. I don't know how
4 predominant it was. It was a concern.

5 Q. It was discussed more than once?

6 A. Probably.

7 Q. And why do you say that?

8 A. I don't recall anything in my 30 year
9 career that wasn't discussed more than once.

10 Q. Fair enough. And you do recall having
11 conversations about how moving away from AWP and going
12 to estimated acquisition cost might have impact on
13 beneficiaries' access to care, right?

14 A. That concern was raised.

15 I'm sorry. Would you ask your question
16 again?

17 Q. I think you answered it.

18 A. Okay.

19 Q. You don't recall who it was raised by?

20 A. Right.

21 Q. But it was a conversation that you had
22 within HCFA?

1 A. Right.

2 Q. And you don't recall any other -- you can't
3 tell me anything else about the content of those
4 discussions as you sit here today; is that right?

5 A. Yes.

6 Q. And it's been some time since you've had
7 those conversations, right?

8 A. Yes.

9 Q. Your memory has faded over time?

10 A. Yes, it has.

11 Q. If I had the opportunity to ask you these
12 questions closer in time to when you had the
13 discussions you might be able to share with the jury
14 more information about what was discussed, right?

15 MS. OBEREMBT: Objection. Calls for
16 speculation.

17 A. That's what I was going to say. I don't
18 know.

19 Q. Well, what do you think, Mr. Niemann? Do
20 you think if I was able to ask you these questions
21 closer in time to the conversations you would remember
22 more about them?

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Page 626

1 UNITED STATES OF AMERICA)

2

3 STATE OF MARYLAND)

4 I, JONATHAN WONNELL, a Notary Public in and
5 for the State of Maryland, do hereby certify that the
6 within transcript is a true and accurate record of the
7 testimony under oath and other proceedings in the
8 above-entitled matter.

9 I further certify that I am not a relative,
10 employee, attorney or counsel of any of the parties to
11 this action and that I am in no way interested in the
12 outcome of this matter.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this _____ day of _____, 20____.

15

16

17

18

JONATHAN WONNELL

19

20 My Commission expires:

21 November 21, 2011

22